

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1687 of 2022

Prasanna s/o Praful Jain .. Applicant
Versus
The State of Maharashtra .. Respondent
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Mr.Niranjan Mundargi i/b Ashok M. Saraogi for the applicant.
Ms.Ameeta Kuttikrishnan for respondent no.2.
Mr. S.V.Gavand, APP for the State.
PSI Shri B.B. Chavan from Sakinaka police station present.

CORAM: BHARATI DANGRE, J.
DATED : 16th JUNE, 2022

P.C:-

1 A Perturbing incident alleged to have been taken place in Akruti Orchid Park, Saki Naka on 5/5/2022 where the complainant reside with her 11 year old daughter, is a differently abled child, resulted in registration of C.R.NO. 1091/22, invoking Sections 354, 354-D, 506(2) of IPC and Sections of 8 and 12 of POCSO Act.

The complaint being lodged on 9/5/2022, arraigned the present applicant as the accused and he came to be arrested on 19/5/2022.

2 The complainant, the mother of the 11 year old child reported that on the date of the incident, at around 22.00 hrs, her daughter was playing with her friend, residing in the same building and at that time, a boy residing in the neighborhood touched her inappropriately and attempted to remove her t-shirt while she was wheel chair bound. The mother narrate that the daughter was petrified by the said incident and only on 7/5/2022, she disclosed the incident to her and narrated to her that the boy had threatened her that if she disclosed the incident to anyone, she would be killed.

 This created a trepidation in the mind of the mother also and she made necessary inquiries about the person residing in the neighborhood and gained knowledge that it was the present applicant, but he had left for his village. She mustered the courage and lodged a complaint by reporting the matter to Saki Naka police station on 9/5/2022.

3 During the course of hearing of the application, the complainant was also noticed and she is represented by learned Advocate Ms.Ameeta Kuttikrishnan. The learned APP is also heard on the said application.

 During the course of investigation, the statement of the victim girl came to be recorded on 24/5/2022, when the girl narrated that on the said date, some friends of her parents were invited for dinner, which included her friend, who was present

when the incident took place and while her friend went inside the room for changing her clothes and she was waiting outside, she overheard someone's voice and a person inquired from her about the location of Flat No.603, when she returned to her friend to make necessary inquiry.

She narrate that she entered the corridor, leading her to flat no.603 and provided information to the person who was sleeping out of the lift, while she responded to his query, he came close to her, by pulling her wheel chair and attempted to lift her dress and touched her, but when she forcefully resisted, he moved back.

At that very moment, since she was called by her friend, she proceeded towards her on the wheel chair. Initially she was hesitant in narrating the incident to her friend since she had faced threat from him, but at a later point of time, she narrated the incident to her friend. The girls thereafter searched for the boy who had committed the misdeed, but he was not to be seen. On asking whether she could recognize him, her answer is in the affirmative.

4 Corroborating her version, is the statement of her friend's recorded on 16/5/2022, by the Police where she has disclose that when she came out, after changing her clothes from the room and when he came out, called for the victim girl, she was not present there, but was seen from the lobby outside the flat

and he was in tears. She narrated the incident to her in a frightened state, and as per the friend's statement, the unknown person tried to gag, her in an attempt to kiss her. She also state that despite search of the accused persons, he was not to be found.

5 During the course of investigation, her CCTV footage from the camera which was installed in the lobby was obtained, and a panchnama to that effect was also drawn. The learned APP has produced the said CCTV footage on the laptop and the counsel for the complainant also had an opportunity to have a look at it.

I myself watched the said footage where it can be seen that the victim girl is coming in and out of the flat, on her wheel chair, and at a particular moment of time, she moves a little ahead, and probably is lead to a lobby in form of a corridor, leading to flat no.603. However, unfortunately, nothing is recorded in the video footage, beyond this pane, when she ride herself in the lobby. The interaction of the victim girl with her friend when she returned back, only disclose that they were involved in some serious conversation, though the camera did not record any conversation. The footage also record the presence of the applicant exiting from the lift and going through the corridor to flat no.603, where he is residing. The CCTV footage do not record anything else than this.

6 The victim is a differently abled child, suffering from Spinal Muscular Atrophy, since she was 11 months old and is bound to a wheel chair. The alleged incident which has happened is unfortunate, if a girl with this physical and mental health, is attempted to be molested. The statement of the victim as well as her mother and her friend, in support of the prosecution case, is already recorded during the course of investigation. The CCTV footage of the lobby is also recovered and preserved.

7 The applicant is accused of committing an offence punishable u/s.354, which is punishable with Imprisonment upto five years. As far as offence punishable u/s.354D and 506-II is concerned, they are bailable offences.

Section 8 of the POCSO Act prescribe punishment for an act of sexual assault which would include an act of touching the breast of the child, or any other part with a sexual intent or establish any physical contact without penetration is punishable with imprisonment which shall not be less than three years, but which may extend to five years.

As far as offence punishable u/s.12 of POCSO, it punish sexual harassment is concerned, the offence is punishable with imprisonment which may extend to three years and shall also be liable to fine.

8 The learned APP, on instructions of the Investigating Officer, who is present in the Court, state that the investigation of

the subject C.R is over, except recording the statement of the victim girl u/s.164 of the Cr.P.C, which could not be done immediately after the incident, as the little girl has undergone some procedure and this has restrained the police from recording the statement.

Recording the statement to the above effect, the presence of the applicant for the purpose of investigation is not necessary. The applicant undisputedly have to face consequences of the serious accusations while he face the trial.

9 The learned counsel Mr.Mundargi make a specific statement that the applicant is not desirous of returning to Mumbai, except for the purpose of participating in the investigation and particularly when he instructions to make a statement that he shall continue to reside at Indore.

10 In the backdrop of the above, when the investigation of subject C.R is over, keeping in mind that the applicant is also a young boy, aged 21 years, I am inclined to release him on bail, subject to a stipulation that till the conclusion of the trial, the applicant shall not step into the building, in which he hired an apartment and where the victim girl is residing with her mother. In order to remove his belongings, if any, he shall take assistance of some third party.

He shall in any case, not establish any contact with the victim girl or her mother and in case of such an attempt, he

shall be denuded of his liberty, even on a mere accusation faced by him by the family of the complainant, being brought to the notice of the Investigating Officer, in any manner. Hence, the following order :-

ORDER

- (a) The Applicant – Prasanna Praful Jain in connection with C.R.No.1091/2022 registered with Saki Naka Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount from the State of Maharashtra. The applicant be released on temporary cash bail of Rs.50,000/- for a period of four weeks.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (c) The Applicant shall report to the Saki Naka police station on 2nd Saturday of every month during the course of the day, till framing of charge.
- (d) The applicant shall not step into the building in which the applicant had hired an apartment and where the applicant is residing with her mother.

(e) The applicant shall not establish any contact with the victim girl of his mother, and in case of such an attempt, he shall be denuded of his liberty.

On framing of charge, the Competent Court shall be at liberty to relax the said condition or vary the same as the Court deems fit.

11 The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)